

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

DOMINIC GARCIA,

Plaintiff,

vs.

GEICO GENERAL INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL

COMES NOW, Defendant, GEICO General Insurance Company, (hereinafter GEICO), by and through its undersigned attorneys, Simone, Roberts & Weiss, P.A., by Stephen M. Simone, and hereby files its Notice of Removal and in support thereof states the following:

1. Plaintiff commenced this lawsuit by filing his Complaint as Dominic Garcia, Plaintiff versus GEICO General Insurance Company, in the First Judicial District Court, County of Santa Fe, State of New Mexico, as Cause Number D-101-CV-2015-00125.

2. Plaintiff's lawsuit is a civil action which alleges that Defendant GEICO committed bad faith and violated the Unfair Insurance Practices Act, in its handling of Plaintiff's uninsured motorist claim. Plaintiff seeks damages against Defendant GEICO, for uninsured motorist coverages, and in addition, has alleged bad faith, and violation of the Unfair Insurance Practices Act. True and correct copies of the documents filed and served by Plaintiff in the First Judicial District are attached hereto as a group, as Exhibit A. A return of service from the Department of Insurance, shows that service was made on January 28, 2015.

3. Defendant GEICO was served through the Superintendent of Insurance who accepted service on behalf of GEICO, on January 28, 2015, therefore, removal is timely.

4. The matters in controversy exceed the sum or value of \$75,000.00, exclusive of interest and costs. Specifically, the Plaintiff has alleged and has demanded the limits of uninsured motorist coverage, to wit, \$75,000.00, but also seeks punitive damages not only for the actions of the tortfeasor but also punitive damages against Defendant GEICO for claim handling. In addition, Plaintiff also seeks attorney's fees under various New Mexico statutes.

5. To confer subject matter jurisdiction on this Court based on diversity of citizenship, the amount in controversy must exceed the sum or value of \$75,000.00, exclusive of interest and cost. 28 U.S.C. §1332(a). Where a complaint does not contain dispositive allegations of the amount in controversy, the jurisdictional amount is determined by the allegations in the underlying complaint. *See e.g., Laughlin v. Kmart Corp*, 50 p.3d, 871, 873 (10th Cir. 1995). Calculations of the amount in controversy include both compensatory and punitive damages. *See, e.g., Bell v. Preferred Life Assur. Soc'y*, 320 U.S. 238, 240 (1943); *Watson v. Blakinship*, 30 F.3d 383, 386 (10th Cir.1994). This calculation also includes attorneys fees. *See Miera v. Dairyland Ins. Co.*, No. 96-0136-M, mem.Op. (D.N.M. Feb. 28, 1996)(denying remand of removed action based on availability of attorney's fees under New Mexico Unfair Claims Practice Act and Unfair Trade Practices Act. *See also 14A Wright & Miller, Federal Practice and Procedure*, §3712, at 176-78, and authorities cited therein; *Foret v. Souther Farm Bureau Life Ins. Co.*, 918 F.2d 534, 537 (5th Cir. 1990). The calculation also include treble damage claims.

6. Defendant GEICO is a foreign corporation incorporated in the State of Maryland, with its principal place of business in Maryland.

7. Plaintiff is a resident of San Miguel County, State of New Mexico.

8. There is diversity of citizenship between Plaintiff and Defendant GEICO pursuant to 28 U.S.C. §1332(a).

9. In accordance with 28 U.S.C. §1446(a), copies of process, pleadings, and discovery served upon served upon Defendant GEICO in this action, are attached hereto.

10. A copy of Defendant GEICO's Notice of Filing of Removal, filed with the First Judicial District Court, County of Santa Fe, is attached hereto as Exhibit B.

WHEREFORE, Defendant GEICO gives notice that this case is removed from the First Judicial District Court, County of Santa Fe, State of New Mexico, to the United States District Court for the District of New Mexico.

Respectfully submitted,

SIMONE, ROBERTS & WEISS, P.A.

"Electronically Filed"

/s/ Stephen M. Simone
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I HEREBY CERTIFY that on the 23rd day of February, 2015, a true and correct copy of the foregoing pleading was filed electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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